

REMARKS

Claims 1, 5, 10-13, 30, 33 and 36 presently appear in this case. No claims have been allowed. The official action of October 25, 2006, has now been carefully studied. Reconsideration and allowance are hereby respectfully urged.

Briefly, the present invention relates to a DNA sequence encoding a protein capable of binding to TRAF, which comprises a nucleotide sequence of SEQ ID NO:4 or a sequence that is degenerate as a result of the genetic code for those sequences. The invention also relates to vectors, host cells and compositions including such DNA.

Reconsideration of the finality of the official action of October 25, 2006, is hereby respectfully urged. The new prior art rejection of claim 1 could and should have been made in the first official action. It was not necessitated by any amendment to claim 1. Accordingly, the finality of the official action of October 25, 2006, is inappropriate and reconsideration and withdrawal thereof is respectfully urged. In a telephone interview on November 7, 2006, this issue was raised and the examiner agreed that the finality of the official action of October 25, 2006, would be withdrawn. It is noted that the examiner interview summary record of November 27, 2006, states that it was agreed that the finality of "Official action mailed 14 August 2006 would be withdrawn."

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This is an obvious clerical error as there was no official action of August 14, 2006. The only final rejection of record in this case is that of October 25, 2006.

With respect to the restriction requirement, the examiner states that the application contains claims 32 and 35 and subject matter of claims 1, 2, 5, 10-13, 30 and 32 that contain subject matter not drawn to the elected nucleotide sequence encoding IREN. Further, the examiner states that claims 33 and 36 read on non-elected subject matter to the extent that they read on the use of a protein encoded by SEQ ID NO:4, a molecule capable of disrupting the interaction of the protein encoded by SEQ ID NO:4 with TRAF2 and any molecule to which said protein encoded by SEQ ID NO:4 binds.

The claims have now all been amended to read only on the elected embodiment of the DNA of SEQ ID NO:4. This has been done without prejudice toward the continuation of prosecution of the other embodiments in divisional applications. Accordingly, all the claims now present in the case are drawn only to the elected embodiment and the restriction requirement has now been obviated.

The examiner notes that claims 32 and 34 [sic, 35] have been noted as currently amended when they should have been noted as "withdrawn, currently amended." This error is

regretted. All of the notations on the present claims are now accurate.

Claim 13 has been rejected under 35 U.S.C. 101 because the claimed invention is drawn to non-statutory subject matter. The examiner states that the term "cell" encompasses a human egg or human embryo and therefore the claim encompasses a human being, which is non-statutory subject matter. The examiner considers the recitation of the limitation "isolated" to be remedial. This rejection is respectfully traversed.

It is urged that no one of ordinary skill in the art reading the specification would interpret the claim language "transformed eukaryotic or prokaryotic host cells" to read on pluripotent human embryonic stem cells that are capable of forming a live human being after having been transformed with a vector according to claim 10. The host cells are defined in the present specification, for example, in the first full paragraph of page 36, which clearly refer to transformed hosts "for the production of the proteins of the invention." Accordingly, it would be inappropriate to interpret the language to encompass a human egg or human embryo. In any event, applicant has accepted the examiner's suggestion and inserted the term "isolated". Accordingly, reconsideration and withdrawal of this rejection is respectfully urged.

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Claim 36 has been rejected under 35 U.S.C. 112, first paragraph, for failing to comply with the enablement requirement. The examiner states that the claim is drawn to a pharmaceutical composition for the prevention or treatment of pathological conditions and the specification does not provide examples thereof. This rejection is respectfully traversed.

Claim 36 has now been amended to delete all reference to intended uses for the composition. Accordingly, it is believed that this rejection has now been obviated. Reconsideration and withdrawal thereof is respectfully urged.

Claim 1, 2, 5, 10-13, 30, 33 and 36 have been rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wallach. The examiner states that Wallach teaches SEQ ID NO:1, which comprises the instant SEQ ID NO:4 differing only at four nucleobases over the entire sequence, wherein said four differences are all marked in the prior art reference as wild-cards. The examiner states that when the reference teaches a small genus, as in the instant case, the claimed species is considered to be in possession of the public. This rejection is respectfully traversed.

The examiner's conclusion that the four wild-cards of Wallach represent a "small genus" is respectfully traversed. As there are four nucleotides, "wild-cards"

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represent 4⁴ different species, i.e., 256 different species. 256 different sequences are not a "small genus" and there is nothing in the Wallach reference that would point one reading this reference to the specific species that is now being claimed. Because the genus is so large, involving selections at each of four different positions, each species thereof should not be considered to be anticipated. Reconsideration and withdrawal of this rejection are therefore respectfully urged.

It is submitted that all of the claims now present in the case clearly define over the references of record and fully comply with 35 U.S.C. 112 and 101. Reconsideration and allowance are therefore earnestly solicited.

Respectfully submitted,

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